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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/086,541	03/04/2002	Bernadette M. Gibbs	53394.000565	1045

7590 04/05/2005

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EXAMINER

KIDWELL, MICHELE M

ART UNIT PAPER NUMBER

3761

DATE MAILED: 04/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

# Office Action Summary

Application No.

10/086,541

Applicant(s)

GIBBS, BERNADETTE M.

Examiner

Michele Kidwell

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 14 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 5,7-8 and 14-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,6 and 9-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 9/24/02.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

Art Unit: 3761

## **DETAILED ACTION**

### ***Election/Restrictions***

Claims 5, 7 – 8 and 14 – 28 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on January 14, 2005.

### ***Specification***

The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 – 4, 6 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Ando et al. (US 5,370,634).

Art Unit: 3761

With reference to claim 1, Ando et al. (hereinafter "Ando") discloses an absorbent article comprising: a main body having a first main body waist portion, a second main body waist portion and a central main body portion disposed between the first and second main body waist portions, the main body having orthogonal vertical and lateral axes (figures 1 – 2); a pair of side panels (14), each side panel connecting the first main body waist portion to the second main body waist portion, the first main body waist portion, the second main body waist portion and the side panels collectively defining a waist opening edge and two leg opening edges (figure 4), each side panel being formed from a first side portion extending laterally outward from the first main body waist portion and a second side portion extending laterally outward from the second main body waist portion (figure 4), the first side portion being attached to the second side portion by a side seam (13) intersecting the waist opening edge at a first seam angle relative to the vertical axis and intersecting one of the leg openings at a second seam angle relative to the vertical axis when the first and second side portions are in a fully stretched condition (figure 1); and an adjustment arrangement including at least one adjustment tab (5e) associated with one of the side panels, each of the at least one adjustment tab including the side seam of the associated side panel and extending outward therefrom and having a lateral tab edge (figure 1), the adjustment arrangement also including at least one adjustment tab fastener (6) adapted for removably attaching the at least one adjustment tab to a receiving portion of the main body as set forth in the figures.

Regarding claim 2, Ando discloses an absorbent article wherein each of the at least one adjustment tab fastener includes a gripping member.

Art Unit: 3761

As to claim 3, Ando discloses an absorbent article wherein the receiving portion includes at least one fastener attachment member (8), the fastener attachment member being adapted for reversible mating engagement with the gripping member as set forth in col. 6, lines 24 – 25.

With reference to claim 4, Ando discloses an absorbent article wherein the gripping member is disposed on the adjustment tab, the gripping member being positioned so that the gripping member can engage the receiving portion of the main body when the garment is arranged in an adjusted configuration on a wearer as set forth in col. 6, lines 26 – 45.

Regarding claim 6, Ando discloses an absorbent article wherein each of the at least one adjustment tab fastener includes a fastening strip extending laterally outward from the lateral tab edge, the gripping member being disposed on the fastening strip, the fastening strip and the gripping member being adapted so that the gripping member can engage the receiving portion of the main body when the garment is arranged in an adjusted configuration on a wearer as set forth in col. 6, lines 26 – 46 and in the figures.

With respect to claim 9, Ando discloses an absorbent article wherein each of the at least one adjustment tab is formed at least in part from the first and second side portions of the associated side panel as set forth in figures 1 and 4.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10 – 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ando et al. (US 5,370,634).

The difference between Ando and claim 10 is the provision that at least one of the first and second side seam angles is in a range from about 10 to degrees to about 80 degrees.

It would have been obvious to one of ordinary skill in the art to modify the side seam angle of Ando in order to provide the most effective product since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable range involves only a level of ordinary skill in the art.

The difference between Ando and claim 11 is the provision that the first side seam angle is in a range from about 10 to degrees to about 80 degrees.

It would have been obvious to one of ordinary skill in the art to modify the side seam angle of Ando in order to provide the most effective product since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable range involves only a level of ordinary skill in the art.

Art Unit: 3761

The difference between Ando and claim 12 is the provision that the first side seam angle is in a range from about 10 to degrees to about 50 degrees.

It would have been obvious to one of ordinary skill in the art to modify the side seam angle of Ando in order to provide the most effective product since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable range involves only a level of ordinary skill in the art.

The difference between Ando and claim 13 is the provision that the first side seam angle is in a range from about 25 to degrees to about 35 degrees.

It would have been obvious to one of ordinary skill in the art to modify the side seam angle of Ando in order to provide the most effective product since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable range involves only a level of ordinary skill in the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday - Friday, 5:30am - 2:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on 571-272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Michele Kidwell  
Examiner  
Art Unit 3761